

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUVIENT M TUEMA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-05936-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant, Juvient M. Tuema, filed an appeal from the February 17, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective November 8, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2021. The claimant participated personally and through a French interpreter with CTS Language Link. The employer, Tyson Fresh Meats Inc., did not participate. Employer witness, Kristi Rossiter, was called but unavailable. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full-time on the processing line and was a manager. Claimant notified employer that his infant daughter needed a liver transplant and applied for FMLA. This occurred around October 24, 2020. Employer approved claimant’s absence and claimant remained in contact with management about the progression of the transplant. Claimant believed he was still employed and would return upon his daughter’s recovery. Claimant had no warnings or agreed upon return to work date. Claimant learned employer discharged him upon expiration of FMLA but was unaware his job was in jeopardy.

Claimant had maintained contact with the employer about his daughter, who had her transplant surgery on February 10, 2021. Claimant was informed by employer that he could reapply when he was ready to return to work. Claimant has not yet returned from Chicago where his daughter remains under medical care, but anticipates he will in May.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker’s contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer’s interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant’s statement and employer’s statement must give detailed facts as to the specific reason for the claimant’s discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The credible, undisputed evidence in this case is that claimant was discharged, without warning, while on an approved leave of absence. Claimant had made employer aware that he needed to take care of his infant daughter, while she awaited a liver transplant in Chicago. Employer agreed to claimant's absence and claimant maintained contact with the employer. For unknown reasons, employer moved to discharge claimant before he was able to return. The employer did not participate in the hearing to refute the credible evidence presented by claimant. The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. Accordingly, benefits are allowed, if he is otherwise eligible.

The issue of whether claimant is able and available to work effective November 15, 2020 (due to family obligations) is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The unemployment insurance decision dated February 17, 2021, (reference 01) is REVERSED. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant is able and available to work effective November 15, 2020 (due to family obligations) is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 07, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>